

06-0971
Property Tax/Locally Assessed
Signed 08/16/2007

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p>Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF SALT LAKE COUNTY, UTAH,</p> <p>Respondent.</p>	<p>ORDER</p> <p>Appeal No. 06-0971</p> <p>Parcel No. #####</p> <p>Tax Type: Property Tax/Locally Assessed</p> <p>Tax Year: 2005</p> <p>Judge: Phan</p>
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This Order may contain confidential “commercial information” within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and Utah Admin. Rule R861-1A-37. The rule prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. However, pursuant to Utah Admin. Rule R861-1A-37 the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this order, specifying the commercial information that the taxpayer wants protected.

Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE
For Respondent: RESPONDENT REPRESENTATIVE, Appraiser, Salt Lake County

STATEMENT OF THE CASE

Petitioner brings this appeal from the decision of the County Board of Equalization. This matter was argued in an Initial Hearing pursuant to the provisions of Utah Code Ann. Sec. 59-1-502.5, on May 7, 2007. Petitioner is appealing the assessed value as established for the subject property by the Salt Lake County Board of Equalization. The lien date at issue is January 1, 2005.

APPLICABLE LAW

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provide by law. (Utah Code Ann. Sec. 59-2-103 (1).)

“Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. (Utah Code Ann. 59-2-102(12).)

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. . . . (4) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson V. Bd. Of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997).

DISCUSSION

The subject property is parcel no. ##### and is located at ADDRESS, CITY, Utah. The Salt Lake County Assessor’s Office had originally set the value of the subject

property, as of the lien date at \$\$\$\$\$. The Salt Lake County Board of Equalization sustained the value.

The subject property consists of 2.74-acres of land improved with an assisted living home for the elderly. The building has 74,084 total square feet and was built in 2004. There are 92 residential units with an average size of 494 square feet. The building is a Class D structure of good grade.

Petitioner's representative argued at the hearing that the building, which was clearly a special use building, should be valued based on the cost approach. Petitioner's representative requested that the value be lowered to \$\$\$\$\$ and submitted two cost analyses. One was an approach based on Marshall-Swift, which indicated a value for the property of \$\$\$\$\$. The second approach was based on the actual cost to construct the building plus an estimated, rather than actual price, for the land. From that approach his value conclusion was \$\$\$\$\$.

The Commission notes that these studies were not submitted as an appraisal. Additionally Petitioner did not mail or exchange this information ten days prior to the hearing. He did have it hand delivered to Respondent by the date it likely would have been received had it been mailed ten days prior. The Commission allows the late submission in this matter, as there would be little prejudice to Respondent. However, the Commission cautions Petitioner's representative that it expects that any documents intended to be offered as evidence are hand delivered or mailed at least ten days prior to the hearing and subsequent failure to do so on his part in other hearings will likely result in the disallowance of the evidence at the hearing.

Respondent submitted an appraisal in this matter. The appraisal had been prepared by RESPONDENT REPRESENTATIVE, Certified General Appraiser. It was RESPONDENT REPRESENTATIVE'S appraisal conclusion that the value of the subject property was \$\$\$\$\$. Although the appraisal indicated a higher value for the property, RESPONDENT REPRESENTATIVE'S indicated that he was offering the appraisal in support of

the Board of Equalization value and not asking that the value of the property be raised to the appraisal value. In the appraisal he prepared two cost approaches. Like Petitioner he considered the cost based on Marshal-Swift data and concluded that the value was \$\$\$\$\$. He also considered an approach based on actual costs from Petitioner's balance sheet. From that approach he concluded a value of \$\$\$\$\$.

There were several differences between the two parties' cost approaches that resulted in the values indicated. Looking at the approaches prepared based on actual costs, with Petitioner's value at \$\$\$\$\$ and Respondent's at \$\$\$\$\$ there was a difference regarding the land value and entrepreneurial costs. Although in its actual costs Petitioner indicated it paid \$\$\$\$\$ for the land, both representatives at the hearing concluded that this was higher than market value. Petitioner indicates that included in the \$\$\$\$\$ price was an entrepreneurial value for putting the whole project together. However, when considering the actual costs, Petitioner's representative did not use the actual land cost, but substituted \$\$\$\$\$ based on what he had determined would be the market value for the land. Then he added only 5% or \$\$\$\$\$ for entrepreneurial profit. In doing so he undercounted the actual entrepreneurial costs and was blending the actual costs with the market cost approach.

Respondent's appraisal did include the full \$\$\$\$\$ purchase price. Although it appears this land cost includes some entrepreneurial profit, RESPONDENT REPRESENTATIVE'S added an additional \$\$\$\$\$ or 12% for entrepreneurial profits. In determining the value in this manner he has double counted a portion of the entrepreneurial profits. If the 12% additional entrepreneurial profit is not considered in his actual cost approach, the value indicated would be near that set by the Board of Equalization.

In considering the parties' cost approach based on the Marshall-Swift costing methods, Petitioner was at \$\$\$\$\$ and Respondent at \$\$\$\$\$. In this method both parties attempted to determine the fair market value of the land based on comparables sales, rather than

the actual subject sale information. RESPONDENT REPRESENTATIVE'S appraisal of land value was higher, and his building costs were higher. Additionally another difference was entrepreneurial profit. It was Petitioner's position that the profit be based on 5%. He presented an article from *The Appraisal Journal* that indicated 5% would be appropriate for this type of building. In his appraisal RESPONDENT REPRESENTATIVE'S used 12% and indicated that this was typical for the market. These differences in the costs analyses resulted in the substantial differences in the value conclusion from each representative.

In addition to the cost approaches, RESPONDENT REPRESENTATIVE'S considered a discounted cash flow based on the actual income. It was his conclusion from this approach that the value was \$\$\$\$\$. RESPONDENT REPRESENTATIVE'S acknowledged that the asking rates for the units included both rent of the units plus a number of services that were provided to assist the elderly tenants, including assistance in bathing or dressing, providing meals, activities and transportation, and having staff at the property twenty four hours a day, seven days a week to respond if the tenant falls or needs help. Because clearly a portion of the income is related to the services and not the real property, RESPONDENT REPRESENTATIVE'S applied a 70% expense rate in determining his value from the income approach. He indicated in his appraisal that this was mid-market range for expenses for these types of properties. Petitioner argued that this approach resulted in a value for the business and not necessarily the real property.

In weighing the evidence submitted in this matter and that Respondent is not asking for a higher value but submitted its appraisal in support of the Board of Equalization value, Petitioner has not shown error on the original value set by the County Board of Equalization or established a lower value. The Commission would tend not to place much weight on the discounted cash flow approach where the expenses had to be estimated to such extent due to the fact that a large percentage of the income relates to the services and not the real property.

However, Respondent's appraisal countered or offset arguments and information submitted by Petitioner in this matter relating to the cost approaches.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2005, is \$\$\$\$\$. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2007.

Jane Phan
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The agency has reviewed this case and the undersigned concur in this decision.

DATED this ____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner
JKP/06-0971.int

D'Arcy Dixon Pignanelli
Commissioner